IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No.

MEI-GSR HOLDINGS, LLC, a Nevada corporation; AM-GSR HOLDINGS, LLC, a Nevada corporation; and GAGE VILLAGE COMMERCIAL DEVELOPMENT, LLC, a Nevada corporation,

Petitioners,

v.

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE, AND THE HONORABLE ELIZABETH GONZALEZ (RET.), SENIOR JUDGE, DEPARTMENT OJ41; AND RICHARD M. TEICHNER, RECEIVER,

Respondents,

and

ALBERT THOMAS, individually; JANE DUNLAP, individually; JOHN DUNLAP, individually; BARRY HAY, individually; MARIE-ANNE ALEXANDER, as Trustee of the MARIE-ANNIE ALEXANDER LIVING TRUST; MELISSA VAGUJHELYI and GEORGE VAGUJHELYI, as Trustees of the GEORGE VAGUJHELYI AND MELISSA VAGUJHELYI 2001 FAMILY TRUST AGREEMENT, U/T/A APRIL 13, 2001; D' ARCY NUNN, individually; HENRY NUNN, individually; MADELYN VAN DER BOKKE, individually; LEE VAN DER BOKKE, individually; DONALD SCHREIFELS, individually; ROBERT R. PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LOU ANN PEDERSON, individually and as Trustee of the PEDERSON 1990 TRUST; LORI ORDOVER, individually; WILLIAM A. HENDERSON, individually; CHRISTINE E. HENDERSON, individually; LOREN D. PARKER, individually; SUZANNE C. PARKER, individually; MICHAEL IZADY, individually; STEVEN TAKAKI, individually; FARAD TORABKHAN, individually; SAHAR TAVAKOL, individually; M&Y HOLDINGS, LLC; JL&YL HOLDINGS, LLC; SANDI RAINES, individually; R. RAGHURAM, individually; USHA RAGHURAM, individually; LORI K. TOKUTOMI, individually; GARRET TOM, individually; ANITA TOM, individually; RAMON FADRILAN, individually; FAYE FADRILAN, individually; PETER K. LEE and MONICA L. LEE, as Trustees of the LEE FAMILY 2002 REVOCABLE TRUST; DOMINIC YIN, individually; ELIAS SHAMIEH, individually; JEFFREY QUINN individually; BARBARA ROSE QUINN individually; KENNETH RICHE, individually; MAXINE RICHE, individually; NORMAN CHANDLER, individually; BENTON WAN, individually; TIMOTHY D. KAPLAN, individually; SILKSCAPE INC.; PETER CHENG, individually; ELISA CHENG, individually; GREG A. CAMERON, individually; TMI PROPERTY GROUP, LLC; RICHARD LUTZ, individually; SANDRA LUTZ,

individually; MARY A. KOSSICK, individually; MELVIN CHEAH, individually; DI SHEN, individually; NADINE'S REAL ESTATE INVESTMENTS, LLC; AJIT GUPTA, individually; SEEMA GUPTA, individually; FREDRICK FISH, individually; LISA FISH, individually; ROBERT A. WILLIAMS, individually; JACQUELIN PHAM, individually; MAY ANN HOM, as Trustee of the MAY ANN HOM TRUST; MICHAEL HURLEY, individually; DOMINIC YIN, individually; DUANE WINDHORST, individually; MARILYN WINDHORST, individually; VINOD BHAN, individually; ANNE BHAN, individually; GUY P. BROWNE, individually; GARTH A. WILLIAMS, individually; PAMELA Y. ARATANI, individually; DARLENE LINDGREN, individually; LAVERNE ROBERTS, individually; DOUG MECHAM, individually; CHRISINE MECHAM, individually; KWANGSOO SON, individually; SOO YEUN MOON, individually; JOHNSON AKINDODUNSE, individually; IRENE WEISS, as Trustee of the WEISS FAMILY TRUST; PRAVESH CHOPRA, individually; TERRY POPE, individually; NANCY POPE, individually; JAMES TAYLOR, individually; RYAN TAYLOR, individually; KI HAM, individually; YOUNG JA CHOI, individually; SANG DAE SOHN, individually; KUK HYUNG (CONNIE), individually; SANG (MIKE) YOO, individually; BRETT MENMUIR, as Trustee of the CAYENNE TRUST; WILLIAM MINER, JR., individually; CHANH TRUONG, individually; ELIZABETH ANDERS MECUA, individually; SHEPHERD MOUNTAIN, LLC; ROBERT BRUNNER, individually; AMY BRUNNER, individually; JEFF RIOPELLE, individually; PATRICIA M. MOLL, individually; DANIEL MOLL, individually;

Real Parties in Interest.

PETITION FOR WRIT OF MANDAMUS OR, IN THE ALTERNATIVE, PROHIBITION

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RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons or entities as described in NRAP 26.1(a) and must be disclosed. These representations are made so the judges of this Court may evaluate possible disqualification or recusal.

Petitioner MEI-GSI Holdings, LLC is a privately held corporation. It has no parent corporations and no publicly held company owns 10% or more of its stock. Petitioner AM-GSR Holdings, LLC is a privately held corporation. It has no parent corporations and no publicly held company owns 10% or more of its stock. Petitioner Gage Village Commercial Development, LLC is a privately held corporation. It has no parent corporations and no publicly held company owns 10% or more of its stock.

Jordan T. Smith, Esq., Brianna Smith, Esq., and Daniel R. Brady, Esq., of the law firm of Pisanelli Bice PLLC, will appear for Petitioners in this Court as will Abran Vigil, Ann Hall, and David C. McElhinney of the Meruelo Group, LLC, who also appeared for Petitioners in the district court.

Petitioners were previously represented, both in this Court and the district court, by: Joel D. Henriod, Daniel F. Polsenberg, and Abraham G. Smith, of Lewis Roca Rothgerber Christie, LLP; Steven B. Cohn and H. Stan Johnson of Cohen Johnson LLC; Gale A. Kern of Leach Kern Gruchow Anderson Song; Mark P. Wray

of the Law Offices of Mark Wray, and Sean L. Brohawn formerly with Reese Kinz & Brohawn, LLC and with Sean L. Brohawn, PLLC.

There are no other persons or entities described in NRAP 26.1(a) that need to be disclosed.

DATED this 8th day of April 2024.

PISANELLI BICE PLLC

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ROUTING STATEMENT

The Supreme Court should retain this matter because it raises issues of statewide public importance regarding the incorrect application of criminal contempt standards, which implicates Petitioners' Due Process rights under both the United States and Nevada Constitution. NRAP 17(a)(12).

ISSUES PRESENTED

1. Does requiring payment to an appointed receiver—who is an arm of the district court—render a contempt sanction criminal rather than civil?

2. Whether the district court committed clear legal error by using the clear-and-convincing standard, rather than the beyond-a-reasonable-doubt standard, to find Petitioners in criminal contempt of an ambiguous court order?

3. Whether the district court manifestly abused its discretion when it found Petitioners in contempt, by clear and convincing evidence, of orders that did not clearly and unambiguously preclude Petitioners' conduct and for which compliance was impossible in any event?

4. Whether the district court exceeded its jurisdiction—and violated Petitioners' Due Process rights—when it issued a coercive contempt sanction for interlocutory orders that became moot upon entry of the final judgment?

5. Did the district court err in its award of attorneys' fees and costs to Real Parties in Interest?

I. INTRODUCTION AND RELIEF SOUGHT

For almost twelve years, different judges have issued competing, conflicting, and unclear orders that have confused the parties, a court-appointed receiver, and many judges in this case. Seeking to take advantage of the confusion, Real Parties in Interest ("Real Parties") launched a salvo of seven motions for orders to show cause. The district court found no contempt in all but two. Yet despite the ambiguous nature of the various orders and the impossibility of compliance, the district court found that Petitioners violated the 2015 order appointing a receiver by withdrawing funds from a reserve account to carry out contractually mandated renovations of the condominium units and the Grand Sierra Hotel and Casino in Reno. However, the district court's contempt order is riddled with legal errors warranting writ relief.[1]

First, despite purporting to apply a civil contempt standard, the district court, in effect, issued a *criminal* contempt sanction when it directed Petitioners to remit

[1] Because the contempt proceeding and subsequent order were issued after the district court entered a final judgment resolving all merits claims between the parties, Petitioners filed an appeal in Docket 87243. This Court held in a December 29, 2023 order that the contempt finding was not appealable. A petition for rehearing remains pending on this issue. The Court's December 29, 2023 Order also overlooked that a NRCP 54(b) certification order of the prior final judgment occurred after the contempt order was entered. Thus, the contempt order merged into the now certified final judgment and may be appealable as part of the pending appeal from the final judgment in Docket 86092. *Lakeview Co. v. Eighth Jud. Dist. Ct.*, No. 59134, 2011 WL 4345888, at *1 (Nev. Sept. 15, 2011) ("While *Pengilly* . . . holds that contempt orders are not independently appealable, an interlocutory contempt order is not excerpted from the general rule stated in *Consolidated Generator*, and it therefore may be reviewed in an appeal from the final judgment.").

funds to an appointed receiver who is an agent of the court. Contempt sanctions payable to the Court are criminal in nature. And by utilizing the civil contempt standard to issue a criminal contempt sanction, the district court violated Petitioners' Due Process rights and committed clear legal error. Second, even if the district court applied the correct legal standard, it manifestly abused its discretion by finding Petitioners in contempt of the Receiver Appointment Order because the record shows the order did not clearly and unambiguously preclude Petitioners' actions. Moreover, the receiver's refusal to comply with its obligations under the Appointment Order rendered compliance with the order impossible. The impossible situation was exacerbated by Senior Justice Saitta's acknowledged neglect of this case and the parties' many pending motions. Finally, still assuming the contempt sanction is civil, the district court lacked jurisdiction to issue a coercive contempt sanction for alleged violations of an interlocutory order as those orders merged into the final judgment. Thus, Petitioners' right to a writ of mandamus or prohibition is clear and indisputable.

Along with preventing irreparable harm to Petitioners, issuing mandamus or prohibition will reiterate and clarify important areas of law—namely, whether ordering a party to pay contempt sanctions to a court appointed receiver transforms the order into criminal contempt and, if so, the proper evidentiary standard. As the record shows, the district court's actions are clearly erroneous and lack jurisdiction.

And, according to a prior order of this Court, Petitioners have no plain, speedy, or adequate remedy at law. Therefore, this Court should entertain this Petition and issue a writ of mandamus or prohibition instructing the district court to vacate and/or unwind[2] its orders (1) finding Petitioners in contempt; (2) directing Petitioners to remit $16,455,101.46 plus interest to an account in the court-appointed receiver's sole control; and (3) requiring Petitioners to pay Real Parties' attorney fees and costs incurred in the contempt proceedings.

II. STATEMENT OF FACTS

A. The Common-Interest Community and Unit Rental Program

In 2005, previous owners of the Grand Sierra Resort ("GSR") created a program to sell 670 hotel rooms within the GSR as private condominiums. (1.PA.80). Pursuant to Nevada's Uniform Common-Interest Ownership Act, the previous owners adopted Bylaws and CC&Rs creating a common-interest community that was governed by the Grand Sierra Resort Unit Owners' Association ("GSRUOA"). (3.PA.500-01). Unit Owners had the option to enter an agreement to rent out their units and share the rental proceeds with MEI-GSR Holdings, LLC

[2] This Court has the authority to require the district court to unwind all erroneous orders pertaining to its improper contempt finding. *See* NRS 2.110 ("When the judgment or order appealed from is reversed or modified, this Court may make, or direct the inferior court to make, complete restoration of all property and rights lost by the erroneous judgment or order.").

("MEI-GSR") ("Terminated Rental Agreement")[3] (collectively with the Bylaws and CC&Rs "Governing Documents"). (2.PA.248, 255).

Under the operative Rental Agreement at the time litigation commenced, MEI-GSR would rent the individually owned units "after Company owned units and hotel rooms . . . have been rented." (*Id.* at 271). As the rental agreement made clear, "there are no rental income guarantees of any nature," and "neither the Company nor manager guarantees that owner will receive any minimum payments under this agreement or that owner will receive rental income equivalent to that generated by any other unit in the hotel." (*Id.* at 260, 281).

The Governing Documents obligated MEI-GSR to maintain the units and common areas in a first-class quality consistent with the prevailing industry standards. (3.PA.495-96). To pay for necessary expenses, MEI-GSR would calculate various fees and assessments that the unit owners had to pay for the maintenance of the units and common areas. (*Id.* at 503-05). Despite the Real Parties' obligation to pay certain fees and expenses, GSR's prior owners were lax with enforcement causing, in part, financial strain on the GSR. (8.PA.1715-16).

B. Real Parties Sue and Obtain a Default.

By 2011, GSR was a bank-owned property on the verge of being "closed and

[3] MEI-GSR assumed the responsibilities of the Declarant in the Governing Documents upon its purchase of the GSR.

boarded up." (*Id.*). Petitioners purchased the property and saved a Reno landmark from going under. (*Id.*). Without Petitioners' purchase and substantial investment, Real Parties would have lost their units and the money put into them. To build and maintain GSR as a world class-resort, Petitioners implemented the CC&RS, including charging fees and assessment as allowed under the Governing Documents.

Rather than being grateful that, at last, they could maintain and increase the value of their units through Petitioners' substantial financial commitments,[4] Real Parties[5] became angry that they were finally being asked to pay their share of costs as required by the Governing Documents. So they thanked Petitioners by filing suit alleging several contract and tort claims. (1.PA.1, 11-21). Over the course of the next year, Real Parties twice amended their complaint. (*Id.* at 23).

The operative complaint—the Second Amended Complaint filed on March 26, 2013—brought 12 claims related to alleged violations of the Terminated Rental Agreement for actions taken prior to March 26, 2013. (*Id.* at 23-47). Real Parties sought: (1) the appointment of a pre-judgment receiver over the GSRUOA; (2) compensatory damages; (3) punitive damages; (4) attorney fees and costs; (5)

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[4] Prior to Petitioners' investment, Real Parties' units were valued between $8,000 and $10,000. (8 PA 1716).

[5] Not all unit owners bought into Real Parties' manufactured outrage. Several unit owners refused to join Real Parties' suit. The district court's extra-jurisdictional actions that impacted the non-party unit owners are addressed, in part, in the writ proceeding in Docket 88065.

declaratory relief; (6) specific performance; (7) an accounting, and (8) "such other and further relief as the Court may deem just and proper." (*Id.* at 47). They did not seek any injunctive relief. (*Id.*).

Petitioners answered the Second Amended Complaint. (*Id.* at 49). However, a short time later, Real Parties filed successive motions to strike the answer as a sanction for alleged discovery violations. (*Id.* at 66-67). The district court granted the motions even though Petitioners' alleged discovery delays arose from Petitioners' then-counsel's personal issues,[6] (*id.* at 77), and struck Petitioners' answer and entered default judgment in Real Parties' favor, (3.PA.461, 638, 656-58). Because of the district court's premature and extreme sanction, Petitioners have never had an opportunity to dispute the Real Parties' claims on the merits.

C. Receiver is Appointed and Damage Awards are Entered.

After the default, Real Parties moved to appoint a receiver to ensure compliance with the Governing Documents. (1.PA.86-87). They alleged a receiver was proper because, after the default, Real Parties "prevailed on [the] cause of action" for a receiver, (*id.* at 85), and a receiver was necessary to implement a rental program, (*id.* at 86-87). However, Real Parties' delineation of the Governing Documents was flawed. As that motion explains, Petitioners—consistent with the

[6] The Nevada Supreme Court ultimately suspended Petitioners' counsel for similar conduct in other cases. (8 PA 1813-16).

Terminated Rental Agreement—properly terminated the original rental agreement by notice on April 20, 2011, effective June 19, 2011. (*Id.* at 81-82; 2.PA.268). Petitioners proposed a new rental agreement that did away with the rotational system, expressly stating Real Parties' units would only be rented after GSR's units are filled. (1.PA.81-82; 2.PA.271). Some Real Parties accepted the new rental agreement. (1.PA.82). Amazingly, Real Parties sought the enforcement of the *terminated* rental agreement as a governing document, (*id.* at 87), even though the Second Amended Complaint did not seek to revoke the then-operative revised Rental Agreement or otherwise seek to reimpose the original agreement, (*see id.* at 37-47). Constrained by the default, Petitioners opposed the motion, arguing that the proposed scope of the receiver exceeded the operative complaint. (2.PA.411). The district court appointed a receiver over GSRUOA pursuant to its order striking Petitioners' answer ("Appointment Order"). (3.PA.463).

Under the Appointment Order the receiver was "appointed for the purpose of implementing compliance, among all condominium units . . . with the" Governing Documents. (*Id.* at 463-64). The Court "charged" the receiver "with accounting for all income and expenses associated with the compliance with the Governing Documents," and provided that "[a]ll funds collected and/or exchanged under the Governing Documents . . . shall be distributed, utilized, or held as reserves in accordance with the Governing Documents." (*Id.* at 464). The order also provided

that Petitioners "shall" "[t]urn over to the Receiver all rents, dues, reserves and revenues derived from the Property wherever and in whatsoever mode maintained." (*Id.* at 471). To effectuate that demand, the court instructed the receiver "[t]o open and utilize bank accounts for receivership funds." (*Id.* at 468). Notably, the Appointment Order did not relieve Petitioners of any obligations under the Governing Documents—including their obligation to maintain the property in a first-class manner. Rather, the Appointment Order simply directed Petitioners to "cooperate" with the receiver in enforcing the Governing Documents. (*Id.* at 464). Nor, as the receiver himself later admitted, did the order (or any other order) prohibit Petitioners from withdrawing funds from the reserve account without the receiver's approval for things like renovations. (9.PA.1955).

D. The Receiver Refused to Act, Which Forced Petitioners to Carry Out the Renovations Required by the Governing Documents.

Before the ink of the Appointment Order was dry, the receiver (including its predecessor) refused to comply with its terms. The receiver never requested control of the reserve accounts. (*Id.* at 1962). Nor did the receiver open an account to receive the reserves from Petitioners *for almost 8 years*. (*Id.* at 1927). Worse, the receiver refused to perform any duties for several years, claiming it was not being paid. (*Id.* at 1934-35). However, this was a manufactured excuse to cover-up the receiver's slothfulness. In actuality, the receiver controlled its own ability to be compensated. But because the receiver refused to perform the calculations to determine the net

rent—and failed to open any bank account in which to deposit the net rents—Petitioners could not transfer the net rents to the receiver's non-existent bank account from which the receiver was to pay itself. (*Id.* at 2018). The receiver created a Catch-22 for itself. Thus, the receiver's own failure to act ground the receivership to a halt.

While the receiver refused to perform its court-ordered duties, Petitioners fulfilled their obligations. As the Governing Documents required, Petitioners renovated the units and common areas to maintain their first-class status. (*Id.* at 2021-22). These renovation costs are documented. (*Id.* at 2022). These renovations benefitted and improved the Real Parties' units as well as the third-party unit owners. (*Id.* at 2021-22). Petitioners incurred approximately $16 million in costs. (*Id.* at 2030).

Even though there was no requirement in any order to seek approval, Petitioners, out of an abundance of caution, twice moved for reimbursement of its renovation expenses to be extra transparent. (*Id.* at 2025-26; 3.PA.663; 6.PA.1238). The district court—Senior Justice Saitta sitting by designation—did not rule on the motions for *several years*.[7] (9.PA.1894-95, 1897-98, 2025-26). Justice Saitta was later admonished for her neglect of this case and the prejudice caused to Petitioners. *In re Judicial Discipline of Nancy Saitta*, No. 87789, at **1-4 (Stipulation and Order

[7] Then-Chief Judge Freeman inappropriately recused the entire Second Judicial District from this case and Senior Justice Saitta was designated.

of Consent to Public Reprimand and Agreement to Not Apply for or Accept Any Appointment as Senior Judge Dec. 20, 2023).

Because Senior Justice Saitta ignored the Petitioners' ultra-cautious motions, Petitioners were forced, pursuant to the Governing Documents, to act to fulfill their duty to maintain the property and visitor experiences. As the receiver conceded, no court order prohibited Petitioners from withdrawing funds from the reserve account. (9.PA.1955). Indeed, the Governing Documents allowed it. (3.PA.515-16, 518). So Petitioners withdrew $16,455,101.46 from the reserve account for the documented renovation costs. (9.PA.2022, 2030).

E. The District Court's Flawed Contempt Proceedings and Findings.

Several years after the supposedly contemptuous conduct occurred, Real Parties filed a barrage of motions to show cause.[8] In the meantime, the case continued. As the 2015 Findings made clear, the post-default damages hearing resolved all outstanding issues except punitive damages. (3.PA.658). In fact, the parties stipulated that the 2015 Findings were not a final judgment solely because the punitive damages remained outstanding. (*Id.* at 660). Finally, in July 2022, after years of delay, the district court held a hearing on punitive damages. (9.PA.1902). And as a result, the district court entered the self-titled "Final Judgment" on February

[8] The district court rejected numerous motions for orders to show cause before and after the evidentiary hearing. This Petition addresses solely the contempt finding the district court did make.

2, 2023. (*Id.* at 1900). After several failed attempts, the judgment was needlessly certified as final in November 2023. (10.PA.2207-08).

Well after the final judgment was appealed, the district court held a four-day contempt trial in June of 2023. (*See* 9.PA.1904-10.PA.2123). At the evidentiary hearing on the orders to show cause, Real Parties' contempt allegations wilted one by one. The receiver admitted that this case was riddled with multiple contradictory orders. (9.PA.1981). Even earlier judges found the orders to be ambiguous or otherwise confusing. (*Id.* at 1958). Next, the receiver conceded that no court order expressly precluded Petitioners from withdrawing funds from the reserve account without the receiver's permission. (*Id.* at 1955). Reiterating its derelictions, the receiver repeatedly testified that it stopped performing work due to a lack of payment, even though it could not get paid without providing the calculations and opening the required bank account. (*Id.* at 1934-35, 1970-71).

Next, Reed Brady, the Executive Director of Finance and Accounting at GSR, testified that the renovations were required by the Governing Documents. (*Id.* at 1997, 2021). He explained that the CC&Rs required Petitioners to maintain the units at a first-class level, and the dated rooms were in desperate need of a facelift. (*Id.* at 2003, 2021). Mr. Brady detailed how, after accumulating approximately $16 million in renovation costs, Petitioners moved the district court for reimbursement and/or payment of the renovation costs from the reserve accounts, as allowed by the

Governing Documents, even though no court order required them to do so. (*Id.* at 2025-26). The district court did not rule on those motions for several years. (*Id.* at 1894-95, 1897-98, 2025-26). Mr. Brady relayed that Petitioners had no choice but to act, especially because no court order unambiguously precluded Petitioners from withdrawing funds from the reserve account. (10.PA.2068).

Despite the Appointment Order's plain language, the receiver's (in)actions rendering compliance with the order impossible, and the evidence presented at the contempt trial, the district court found that the withdrawals from the reserve accounts violated the Appointment Order by clear and convincing evidence ("Contempt Order"). (*Id.* at 2125). Specifically, the district court concluded that the withdrawals violated the Appointment Order's directive that Petitioners must "[t]urn over to the Receiver all rents, dues, reserves and revenues derived from the Property wherever and in whatsoever mode maintained"—even though there was no account in which to deposit the funds. (*Id.*).

Even though the Contempt Order applied the civil contempt standard, the court imposed a criminal contempt sanction. It required Petitioners to remit $16,455,101.46 in funds, plus interest, to an account under the receiver's sole control. (*Id.* at 2126). The court also imposed the maximum statutory fine and required Petitioners to pay Real Parties' contempt-related attorney fees and costs. (*Id.*).

III. REASONS WHY THE REQUESTED WRIT SHOULD ISSUE

A. The Court Should Entertain this Petition.

This Court has original jurisdiction to issue a writ of mandamus or prohibition. Nev. Const. art. 6, § 4. Writ petitions are usually the proper vehicle to challenge a district court's contempt order. *Dep't of Health & Human Servs., Div. of Pub. & Behav. Health v. Eighth Jud. Dist. Ct.*, 139 Nev., Adv. Op. 28, 534 P.3d 706, 710 (2023); *see also Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000) (holding that writ petitions are "more suitable vehicles for review of contempt orders"); *but see Lakeview Co.*, 2011 WL 345888, at *1 ("While *Pengilly* . . . holds that contempt orders are not independently appealable, an interlocutory contempt order is not excerpted from the general rule stated in *Consolidated Generator*, and it therefore may be reviewed in an appeal from the final judgment.").

Mandamus is "available to compel the performance of an act which the law . . . [requires] as a duty resulting from an office, trust or station, or to control an arbitrary or capricious exercise of discretion." *PetSmart, Inc. v. Eighth Jud. Dist. Ct.*, 137 Nev. 726, 729, 499 P.3d 1182, 1186 (2021) (alterations in original) (quoting *Cote H. v. Eighth Jud. Dist. Ct.*, 124 Nev. 36, 39, 75 P.3d 906, 807-08 (2008)). A writ of prohibition is the "proper remedy to restrain a district [court] from exercising a judicial function without or in excess of its jurisdiction." *Smith v. Dist. Ct.*, 107

Nev. 674, 677, 818 P.2d 849, 851 (1991). Prohibition issues "to curb the [district court's] extrajurisdictional act." *Canarelli v. Eighth Jud. Dist. Ct.*, 136 Nev. 247, 250, 464 P.3d 114, 119 (2020) (quoting *Toll v. Wilson*, 135 Nev. 430, 432, 453 P.3d 1215, 1217 (2019)).

Because this Court has earlier said that Petitioners cannot appeal from a contempt order, *Pengilly*, 116 Nev. at 649, 5 P.3d at 571, they have no remedy at law, *Dep't of Health & Human Servs., Div. of Pub. & Behav. Health*, 534 P.3d at 710. As such, this Court must entertain this Petition. *See id.* Public policy also favors entertaining this Petition because the issue of whether a sanction payable to a court-appointed receiver constitutes criminal contempt is a matter of first impression. *See PetSmart, Inc.*, 137 Nev at 729, 499 P.3d at 1186. The erroneous application of the civil contempt standard to a criminal contempt sanction raises issues of public concern related to Petitioners' Due Process rights, which warrant writ relief. *See id.* Similarly, this Court has never addressed whether a district court can hold a party in contempt of an interlocutory order after final judgment.

B. The Court Should Issue a Writ of Mandamus.

1. Legal standard

Mandamus issues to correct a manifest abuse of discretion, *Segovia v. Eighth Jud. Dist. Ct.*, 133 Nev. 910, 912, 407 P.3d 783, 785 (2017), such as a "clear and indisputable legal error," *R.J. Reynolds Tobacco Co. v. Eighth Jud. Dist. Ct.*, 138

Nev., Adv. Op. 55, 514 P.3d 425, 428 (2022) (quoting *Archon Corp. v. Eighth Jud. Dist. Ct.*, 133 Nev. 816, 819-20, 407 P.3d 702, 706 (2017)). Similarly, mandamus will issue where the district court's "judgment exercised is manifestly unreasonable." *Walker v. Second Jud. Dist. Ct.*, 136 Nev. 678, 680-81, 476 P.3d 1194, 1197 (2020) (quoting *State v. Eighth Jud. Dist. Ct.*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011)).

2. The district court manifestly abused its discretion by applying the civil contempt standard even though it imposed a criminal contempt sanction.

"Contempt proceedings, while usually called civil or criminal, are, strictly speaking, neither." *Warner v. Second Jud. Dist. Ct.*, 111 Nev. 1379, 1382, 906 P.2d 707, 709 (1995) (quoting *Marcisz v. Marcisz*, 357 N.E.2d 477, 479 (Ill. 1976)). However, "it remains important to classify contempt sanctions as civil or criminal, because 'criminal penalties may not be imposed on someone who has not been afforded the protections that the Constitution requires of such criminal proceedings.'" *Detwiler v. Eighth Jud. Dist. Ct.*, 137 Nev. 202, 210, 486 P.3d 710, 718 (2021) (quoting *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 826 (1994)). A court cannot impose criminal contempt sanctions unless it makes all requisite findings beyond a reasonable doubt. *City Council of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 893, 784 P.2d 974, 979 (1989); *see also Hicks v. Feiock*, 485 U.S. 624, 632 (1988).

To determine whether a contempt proceeding is civil or criminal, courts look to the penalty imposed—not the penalty sought or the title the parties give the proceeding. *Detwiler*, 137 Nev. at 210, 486 P.3d at 718. Contempt becomes criminal when the sanction is "determinate or unconditional" and is not "affected by any future action by the contemnor." *Warner*, 111 Nev. at 1383, 906 P.2d at 709; *see also Bagwell*, 512 U.S. at 827-28 (explaining that a contempt sanction is punitive if it is "to vindicate the authority of the court"). If the contempt order imposes a monetary sanction, it is punitive, and thus criminal, "*when it is paid to the court*." *Detwiler*, 137 Nev. at 210, 486 P.3d at 718 (emphasis added) (quoting *Hicks*, 485 US. at 631-32); *In re Determination of the Relative Rights of the Claimants & Appropriators of the Waters of the Humboldt River Stream Sys. & Tributaries*, 118 Nev. 901, 909, 59 P.3d 1226, 1231 (2002) (recognizing that fines issued under NRS 22.100 are criminal contempt sanctions); *cf. Shell Offshore Inc. v. Greenpeace, Inc.*, 815 F.3d 623, 629 (9th Cir. 2016) ("The purpose of civil contempt is coercive or compensatory.").

Here, the district court's contempt sanction is punitive, not compensatory. The district court's sanction required, among other things, for Petitioners to turnover $16,455,101.46 plus interest to the receiver in an account the receiver alone controls. (10.PA.2125-26). And, as courts routinely recognize, a receiver is an agent of the court—or, in other words, "an arm of the court." *See U.S. Bank Nat'l Ass'n v.*

Palmilla Dev. Co., Inc., 131 Nev. 72, 77, 343 P.3d 603, 606-07 (2015) (recognizing that a receiver is "in a sense an arm of the court" and "acts as a court's proxy"); *see also State v. Whitehurst*, 193 S.E. 657, 660 (N.C. 1937) ("Generally speaking a receiver is not an agent, except of the court appointing him . . . . His acts and possession are the acts and possession of the court."); 65 Am. Jur. 2d *Receivers* § 1 (Feb. 2024 Update) ("A receiver, appointed by the Court, in the discretion of the court, is an agent, representative, arm, fiduciary, or officer of the appointing court."). Indeed, the district court appointed "[t]he [r]eceiver [as] *an officer and master of the* [*c*]*ourt*." (3.PA.466) (emphasis added).

Accordingly, this sanction is punitive as it requires payment to the court rather than the opposing party. *Detwiler*, 137 Nev.at 210, 486 P.3d at 718; *see also F.T.C. v. Am. Nat'l Cellular*, 868 F.2d 315, 322 (9th Cir. 1989) (affirming the district court's criminal contempt sanction directing defendant to return funds to an account controlled by a court-appointed receiver). Moreover, because the sanction cannot be "affected by any future action by the contemnor," it is unconditional and determinate. *Warner*, 111 Nev. at 1383, 906 P.2d at 709. And, finally, the sanction was issued under NRS 22.100, which imposes criminal contempt sanctions. *See In re Determination*, 118 Nev. at 909, 59 P.3d at 1231 ("The district court was not therefore limited to criminal contempt sanctions under NRS 22.100."). As such, the contempt sanction and proceedings are criminal, not civil.

Since the contempt proceedings were criminal *in fact*, the district court committed clear legal error, and thus manifestly abused its discretion, when it applied the wrong legal standard. In criminal contempt proceedings, the district court must make all requisite findings beyond a reasonable doubt. *City Council of Reno*, 105 Nev. at 893, 784 P.2d at 979; *see also Hicks*, 485 U.S. at 632. However, the district court found only "by clear and convincing evidence that" Petitioners committed contempt. (10.PA.2125). Accordingly, the district court manifestly abused its power by finding Petitioners in contempt as it applied the wrong—and lesser—legal standard, *Bohannon v. Eighth Jud. Dist. Ct.*, No. 69719, 2017 WL 1080066, at *4 (Nev. Mar. 21, 2017) (concluding that the district court manifestly abused its discretion in holding a party in criminal contempt because the court applied the clear-and-convincing standard to the contempt proceedings), and violated their Due Process rights, *Bagwell*, 512 U.S. at 834. Thus, this Court should grant this Petition and enter an order directing the district court to vacate its order finding Petitioners in contempt. *See Bohannon*, 2017 WL 1080066, at *4 (issuing a writ of mandamus "instructing the district court to vacate the contempt sanctions imposed").

3. Even under the lesser standard, the district court manifestly abused its discretion as the Appointment Order did not expressly preclude Petitioners conduct and compliance with the order was impossible.

The contempt order must be vacated even if the district court did not improperly enter a criminal contempt sanction. For an order to give rise to contempt, it "must be clear and unambiguous, and must spell out the details of compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed on him." *Div. of Child & Fam. Servs., Dep't of Hum. Res., State of Nev. v. Eighth Jud. Dist. Ct.*, 120 Nev. 445, 454-55, 92 P.3d 1239, 1245 (2004) (quoting *Cunningham v. Eighth Jud. Dist. Ct.*, 102 Nev. 551, 559-60, 729 P.2d 1328, 1333-34 (1986)). "A court order which does not specify the compliance details in unambiguous terms cannot form the basis for a subsequent contempt order." *Id.* And a party cannot be in contempt of an order where compliance with the order is impossible. *Dep't of Health & Hum. Servs., Div. of Pub. & Behav. Health v. Eighth Jud. Dist. Ct.*, 139 Nev., Adv. Op. 28, 534 P.3d 706, 712 (2023).

The district court concluded that Petitioners violated the Appointment Order by withdrawing funds from the reserves to pay for the contractually mandated renovations to the units. (10.PA.2125). But the Appointment Order did not unambiguously preclude Petitioners' actions. The language relied on by the district court merely stated that Petitioners must "[t]urn over to the Receiver all rents, dues,

reserves and revenues derived from the Property wherever and in whatsoever mode maintained."[9] (*Id.*; 3.PA.471). But the Appointment Order did not sequester the funds to be held, isolated, in perpetuity—it expressly recognized that "[a]ll funds collected . . . under the Governing Documents . . . shall be distributed, *utilized*, or held as reserves *in accordance with the Governing Documents*." (3.PA.464) (emphases added). Nor did the Appointment Order relieve Petitioners of their obligations under the Governing Documents to remodel or renovate the units to keep them at a first-class level. (*See generally id.* at 463-71). In fact, the Appointment Order expressly requires the Governing Documents, including the CC&Rs, to be carried out in their entirety. (*Id.* at 464). The Governing Documents also expressly allow Petitioners to use the reserves to pay for the renovations of the units. (*Id.* at 511-12, 515-16, 518-19). Therefore, the Appointment Order does not clearly and unambiguously preclude Petitioners from withdrawing funds from the reserve account to pay for the renovation of the units.

The receiver admitted as much at the contempt trial. The receiver testified, "I don't think there's anything that specifically addresses whether or not [Petitioners] can withdraw amounts [from the reserve]." (9.PA.1955). Consequently, the district

[9] The receiver admits that it does not think the Appointment Order "means specifically turn over all of the funds," but rather that "it means to turnover the determination of reserving." (9 PA 1956).

court manifestly abused its discretion by finding Petitioners in contempt of the Appointment Order.

Even assuming the Appointment Order is not ambiguous, the receiver's derelictions *from day one of its appointment* made compliance with the Appointment Order impossible. Although the Appointment Order issued January 7, 2015, the receiver conceded that it never tried to take over the reserve accounts until 2023, over 8 years later. (*Id.* at 1957). The receiver acknowledged that "to date" it had not demanded Petitioners turn over the reserve accounts to it. (*Id.*) In fact, the receiver never opened an account to receive any funds from Petitioners until 2023—after Real Parties moved for contempt and Petitioners exposed the fatal flaw in Real Parties' request. (*Id.* at 1927). Real Parties themselves acknowledged that because of the receiver's inaction, Petitioners properly possessed the reserve accounts. (6.PA.1204). Thus, compliance with the Appointment Order was impossible because, by all accounts, the receiver itself did not want to control the reserves and never opened a bank account into which Petitioners could give the receiver the reserve funds.

Exacerbating the logjam, the receiver refused to perform its court-ordered tasks, which forced Petitioners to carry out the Governing Documents so that the GSR did not collapse and so that Petitioners did not breach their duties under the Governing Documents. The receiver repeatedly reaffirmed that it was derelict in its

court-order duties. It claims that it quit performing its functions because it was not being paid. (9.PA.1934-35). However, the receiver would not prepare the rental calculations for Petitioners or open an account to receive the reserves (despite the court ordering the receiver to do so) out of which it was going to be paid. In essence, the receiver put itself in a Catch-22 and decided not to do anything. Without the receiver complying with its obligations, Petitioners could not remit the portion of the net rents to the receiver that the receiver was to pay itself from. (*Id.* at 2018). While the receiver could flout its court-ordered obligations, Petitioners could not. Petitioners were duty-bound to continue operating their business, especially in light of their obligations to non-party unit owners. (*Id.* at 2015, 2041). Even assuming that the Appointment Order could be construed to unambiguously prohibit Petitioners' actions, the receiver's derelictions made Petitioners' compliance with the order impossible. The receiver consistently failed to perform its court-ordered tasks. As such, the district court erred when it found Petitioners in contempt. *Dep't of Health & Hum. Servs., Div. of Pub. & Behav. Health*, 139 Nev., Adv. Op. 28, 534 P.3d at 712.

Additionally, Senior Justice Saitta's neglect of this case further rendered compliance with any operational order impossible. While Senior Justice Saitta presided, Petitioners twice sought court approval of the reimbursement of the renovation expenses even though they did not need to. (9.PA.2025-26; *see also id.*

at 1894-94, 1897-98). Senior Justice Saitta failed to resolve those motions for over two years. (9.PA.2025-26; *see also id.* at 1894-94, 1897-98). As the Commission on Judicial Discipline found, Justice Saitta "did not timely resolve and issue orders" on the nearly 42 submitted motions even though she "requested and received lists of the pending emergent motions from the parties' counsel." *In re Judicial Discipline of Nancy Saitta*, No. 87789, at *2 (Stipulation and Order of Consent to Public Reprimand and Agreement to not Apply for or Accept any Appointment as Senior Judge Dec. 20, 2023). Justice Saitta's delay prejudiced Petitioners and created an untenable situation. It was impossible to get relief or clarification from Justice Saitta on any motion related to the Appointment Order. *See id.* Petitioners' legal responsibilities under the Governing Documents were not paused merely because the receiver and presiding judge failed to act for multiple years.

Because the Appointment Order did not unambiguously preclude Petitioners from withdrawing funds from the reserve accounts, and the receiver's actions made compliance with the Appointment Order impossible, the district court manifestly abused its discretion in finding Petitioners in contempt. Accordingly, this Court should issue a writ of mandamus directing the district court to vacate its contempt findings and the related orders.

C. This Court Should Issue a Writ of Prohibition.

To the extent this Court concludes the Contempt Order was civil, a writ of prohibition is still appropriate because the district court lacked jurisdiction to enter a coercive civil contempt order after a final judgment had entered.[10] In civil contempt proceedings, the district court lacks jurisdiction to hold a party in contempt of interlocutory orders *after* entry of a final judgment. *See, e.g.*, *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 451 (1913); *Consol. Rail Corp. v. Yashinsky*, 170 F.3d 591, 596 (6th Cir. 1999) (recognizing that the district court lacks jurisdiction to issue a coercive contempt sanction after expiration of the underlying judgment); *Petroleos Mexicanos v. Crawford Enters., Inc.*, 826 F.2d 392, 400 (5th Cir. 1987) ("If the civil contempt proceeding is coercive in nature, the general rule is that it is mooted when the proceeding out of which it arises is terminated."); *cf. Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395-96 (1990) (recognizing that "[a] criminal contempt charge is . . . a separate and independent proceeding at law that is not part of the original action" (internal quotation marks omitted)); *United States v. Mine*

[10] While this Court previously concluded that the final judgment was not "final" in light of the receiver, *MEI-GSR Holdings, LLC v. Thomas, et al.*, Nos. 85915, 86092, 86985, 87243, 87303, 87566, 87567, 87685, at * (Order Resolving Motions, Dismissing and Consolidating Appeals, and Reinstating Briefing Dec. 29, 2023), Petitioners' Petition for Rehearing (and any petition for en banc reconsideration) remain pending, *id.* (Appellants' Petition for Rehearing of December 29, 2023 Order Jan. 16, 2024).

Workers of Am., 330 U.S. 258, 294 (1947) ("Violations of an order are punishable as criminal contempt even though . . . the basic action has become moot.").

Here, however, assuming that the Contempt Order is civil, it is a coercive contempt order that was mooted upon entry of the final judgment. Because the Contempt Order required Petitioners to remit funds and transfer the reserves to an account under the receiver's control, (10.PA.2126), it is a coercive contempt order, *Warner*, 111 Nev. at 1383, 906 P.2d at 709. Thus, because a final judgment was entered before the contempt proceeding, the coercive contempt sanction became moot, and the district court lacked jurisdiction to enter the coercive contempt order. *Ohr ex rel. NLRB v. Latino Express, Inc.*, 776 F.3d 469, 479-80 (7th Cir. 2015) (recognizing the "general rule" that "[[i]f a civil contempt order is coercive in nature . . . it is mooted when the proceeding out of which it arises terminates"). *Klett v. Pim*, 965 F.2d 587, 590 (8th Cir. 1992) ("A court cannot impose a coercive civil contempt sanction if the underlying injunction is no longer in effect."); *Chittenden v. Just. Ct. of Pahrump Twp.*, 140 Nev., Adv. Op. 5, 2024 WL 321622, at *3 (Ct. App. 2024) ("However, '[b]ecause mootness is an element of justiciability and raises a question as to our jurisdiction, we consider the matter sua sponte.'" (quoting *Aguirre v. S.S. Sohio Intrepid*, 801 F.2d 1185, 1189 (9th Cir. 1986))); *North Carolina v. Rice*, 404 U.S. 244, 246 (1971) ("Mootness is a jurisdictional question.").

Therefore, the coercive contempt sanction must be vacated to avoid due-process violations. *Shell Offshore Inc.*, 815 F.3d at 631 ("Thus, in cases where the underlying proceeding has been rendered moot, the coercive contempt proceedings must be vacated in order to avoid a due-process violation.").

D. This Court Must Vacate the Award of Attorney Fees.

Because the contempt order fails, this Court should summarily vacate the award of attorney fees and costs. *Roe v. Roe*, 139 Nev., Adv. Op. 21, 535 P.3d 274, 293 (Ct. App. 2023) ("An award of attorney fees and costs is appropriately vacated when a portion of the underlying order is reversed."). However, to the extent that this Court disagrees, the attorney fees award should be vacated on the merits.[11] Substantial evidence does not support the district court's *Brunzell* analysis. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (reviewing an attorney fees award for an abuse of discretion and explaining that this Court "will affirm an award that is supported by substantial evidence"). Substantial evidence is "that which a reasonable mind might accept as adequate to support a conclusion." *Bacher v. Office of the State Eng'r*, 122 Nev. 1110, 1121, 146 P.3d 793, 800 (2006) (internal quotation marks omitted). Under *Brunzell v. Golden Gate National Bank*, courts must consider:

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[11] The merits of the attorney fees award are also addressed in the forthcoming appeal in Docket 88043.

> (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.

85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

Here, the district court denied 5 of Real Parties' 7 motions for orders to show cause, (10.PA.2122), yet nonetheless awarded Real Parties 75 percent of the attorney fees incurred preparing for and litigating the contempt trial, (*id.* at 2123, 2204). Succeeding on approximately 29 percent of their motions does not support an award of 75 percent of the attorney fees since Real Parties were not successful on an overwhelming majority of its motions. *Cf. Brunzel*, 85 Nev. at 349, 455 P.2d at 33 (considering "the result: whether the attorney was successful" when awarding attorney fees).

Real Parties' billing records further show that apportionment is not possible as they lack any detail sufficient to apportion the costs incurred. Real Parties' records contain only generic descriptions of work performed that do not detail which of the orders to show cause the work performed contributed to. (*See, e.g.*, *id.* at 2140, 2143). Real Parties' failure to include such detail in the billing records is a violation of their "burden of submitting detailed time records justifying the hours claimed." *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986). It does not

entitle Real Parties to a windfall award of unearned fees. *See Farrar v. Hobby*, 506 U.S. 103, 115 (1992) (explaining that attorney fees awards were "never intended to produce windfalls to attorneys" (internal quotation marks and citation omitted)).

Thus, because Real Parties lost an overwhelming majority of their motions for orders to show cause and failed to produce detailed billing records allowing for apportionment of fees, the award was legally erroneous and not supported by substantial evidence.

IV. CONCLUSION

For these reasons, this Court should issue a writ of mandamus, or alternatively prohibition, instructing the district court to vacate and/or unwind its orders (1) finding Petitioners in contempt; (2) directing Petitioners to remit $16,455,101.46 plus interest to an account in the receiver's sole control; and (3) requiring Petitioners to pay Real Parties' attorney fees and costs incurred in the contempt proceedings.

DATED this 8th day of April 2024.

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VERIFICATION/DECLARATION

I, Jordan T. Smith, Esq., declare as follows:

1. I am counsel for Petitioner.

2. Under NRAP 21(a)(5), I verify that I have read this Petition for Writ of Mandamus or, in the Alternative, Prohibition and that the same is true to my own knowledge, except for those matters stated on information and belief, and as to those matters, I believe them to be true.

3. I have also reviewed the contents of the Appendix filed with this Petition and verify that the documents included are true and correct copies. NRAP 21(a)(4).

4. I declare under the penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

This declaration is executed on this 8th day of April 2024, in Las Vegas, Nevada.

/s/ Jordan T. Smith
JORDAN T. SMITH, ESQ.

CERTIFICATE OF COMPLIANCE

I hereby certify that this Petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Office Word 2013 in size 14 font in double-spaced Times New Roman.

I certify that I have read this Petition and that it complies with the page or type-volume limitations of NRAP 21(d) because, excluding the parts of the brief exempted, it is proportionately spaced, has a typeface of 14 points or more, and 6,955 words.

I further certify that, to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires that every assertion in this Petition regarding matters in the record to be supported by appropriate references to Appendix filed with this Petition. I understand that I may be subject to sanctions in the event that the accompanying Petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Finally, I certify that the Appendix accompanying this Petition complies with NRAP 21(a)(4) and NRAP 30 by including necessary material and other original documents essential to understand the matter set forth in herein.

DATED this 8th day of April 2024.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 8th day of April 2024, I caused to be served via email (FTP) a true and correct copy of the above and foregoing **PETITION FOR WRIT OF MANDAMUS OR, IN THE ALTERNATIVE, PROHIBITION** properly addressed to the following:

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